

## Message Text

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ACTION DLOS-09

INFO OCT-01 IO-13 ISO-00 AF-10 ARA-10 EA-07 EUR-12  
NEA-10 FEA-01 AGR-01 ACDA-07 AID-05 CEA-01 CEQ-01  
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EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-01 INR-07  
INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01 OES-07  
OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06  
/163 W

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R 142330Z JUN 77

FM USMISSION USUN NEW YORK

TO SECSTATE WASHDC 4030

LIMITED OFFICIAL USE SECTION 1 OF 2 USUN 1899

FROM LOS DEL

E.O. 11652: N/A

TAGS: PLOS

SUBJ: INFORMAL PLENARY ON PART IV (CDS) OF 13 JUNE 1977

### SUMMARY:

1. IN A DISCUSSION OF ARTICLE 14, THE CHAIRMAN PROPOSED TWO AMENDMENTS RELATING TO: (A) THE APPLICABLE INTERNATIONAL FORUM TO ENTERTAIN QUESTIONS OF RELEASE FROM DETENTION; AND (B) WHO MAY BRING APPLICATION FOR SUCH RELEASE. BOTH AMENDMENTS WERE GENERALLY WELL RECEIVED. ATTENTION WAS GIVEN TO POSSIBLE CONFLICTS BETWEEN THE NATIONAL AND INTERNATIONAL JURISDICTIONS, PARTICULARLY INsofar AS SUBSEQUENTLY CONTESTING IN THE INTERNATIONAL FORUM THE AMOUNT OF THE BOND SET BY THE NATIONAL FORUM. THE FRG UNFORTUNATELY UNDERLINED THE POSSIBILITY OF A CONFLICT BETWEEN ARTICLES 14 AND 17.  
END SUMMARY

2. CHAIRMAN AMERASINGHE IN OPENING DISCUSSION OF ARTICLE 14 (PROMPT  
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RELEASE OF VESSELS) DIRECTED ATTENTION OF THE INFORMAL PLENARY TO THE PROVISION IN ARTICLE 14(1) FOR RELEASE OF VESSELS AND CREW. HE REFERRED TO ARTICLE 61 OF PART II WHICH PROVIDES FOR ARREST AND JUDICIAL PROCEEDINGS AGAINST UNSPECIFIED ENTITIES IN ARTICLE 61(2), BUT PROVIDES EXPRESSLY FOR RELEASE OF "VESSELS AND THEIR CREWS" IN ARTICLE 61(2). HE SUGGESTED THAT THOSE DELEGATIONS WHO

WISH TO EXTEND THE RELEASE PROVISION TO PASSENGERS AND CARGO SHOULD MAKE SUCH PROPOSALS OF A SUBSTANTIVE NATURE IN PART II. AFTER STATING THAT THE "RELEVANT PROVISIONS" INCLUDED IN ARTICLE 14(1) REFERRED TO ARTICLE 61(II) AND ARTICLE 36 (III), HE MENTIONED THE DESIRE OF SOME DELEGATIONS TO DELETE "RELATING TO NAVIGATION" IN ARTICLE 14(1). THE PURPOSE OF THIS AMENDMENT WAS TO BROADEN THE SCOPE OF THE DISPUTES COVERED BY THAT ARTICLE AND TO ENSURE THAT THE RANGE OF DISPUTES THUS COVERED CORRESPONDED TO THE RELEVANT PROVISIONS REFERRED TO IN ARTICLE 14(1). IN ORDER BOTH TO ACCOMPLISH THIS OBJECTIVE AND TO OVERCOME THE OBJECTIONS OF CERTAIN DELEGATIONS NOT WILLING TO ACCEPT THE LAW OF THE SEA TRIBUNAL AS PROVIDED IN ARTICLE 9, THE CHAIRMAN PROPOSED THAT ALL AFTER "THE QUESTION OF" IN ARTICLE 14(1) BE DELETED AND REPLACED BY "...RELEASE FROM DETENTION MAY BE BROUGHT BEFORE ANY COURT OR TRIBUNAL AGREED UPON BY THE PARTIES. FAILING SUCH AGREEMENT WITHIN ONE WEEK FROM THE TIME OF DETENTION, THE QUESTION OF RELEASE MAY BE BROUGHT BEFORE ANY COURT OR TRIBUNAL ACCEPTED BY THE DETAINING STATE UNDER ARTICLE 9 OR BEFORE THE LAW OF THE SEA TRIBUNAL, UNLESS THE PARTIES OTHERWISE AGREE." THE CHAIRMAN THEN OPENED THE FLOOR TO GENERAL DEBATE ON THE PROPOSED AMENDMENT AND OTHER PARAGRAPHS OF ARTICLE 14 WHICH ARE EXAMINED HEREFOR SAKE OF CONVENIENCE SERIATIM.

3. ARTICLE 14(1) (JURISDICTION TO RELEASE)

NIGERIA, IN INDICATING THE DIFFICULTY INGERENT IN DETERMINING WHAT A "FAILURE TO COMPLY" ENTAILS, PROPOSED THAT LIMITED OFFICIAL USE

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"HAVE FAILED TO COMPLY" BE CHANGED TO "HAVE FAILED, OR NEGLECTED OR REFUSED TO COMPLY." BRAZIL, IN SUPPORT OF THIS RATIONALE, PROPOSED THE CLAUSE BE CHANGED TO "ARE ALLEGED TO HAVE FAILED TO COMPLY." THE CHAIRMAN RESPONDED TO REMARKS BY VENEZUELA AND OTHER DELEGATIONS REGARDING THEIR CONCERN ABOUT THE SCOPE OF THE WORDS "RELATING TO NAVIGATION," BY INDICATING THAT REFERENCE TO "THE RELEVANT PROVISIONS OF THE PRESENT CONVENTION" EFFECTIVELY LIMITED APPLICATION OF THIS PROVISION; AND THAT IN CASE OF DOUBT CROSS REFERENCE COULD BE MADE TO THE APPROPRIATE ARTICLES IN PARTS II AND III. BULGARIA, CANADA AND THE SOVIET UNION INDICATED THEY COULD ACCEPT ARTICLE 14(1) AS DRAFTED, AS WELL AS THE CHAIRMAN'S AMENDMENT THERETO. THE USSR, SUPPORTED BY BULGARIA, FURTHER SUGGESTED THAT THE WORDS "AND FISHERIES" BE ADDED AFTER THE PHRASE "RELATING TO NAVIGATION,"; CANADA IMMEDIATELY OBJECTED. AUSTRALIA, IS REFERRING TO ARTICLE 14(1) AND THE ISSUE OF AN APPROPRIATE TRIBUNAL, STATED THE OVERRIDING IMPORTANCE THAT IT BE A PRECONSTITUTED ONE IN ORDER TO ENSURE PROMPT ACTION ON A REQUEST FOR

RELEASE.

4. ARTICLE 14(2) (APPLICATION FOR RELEASE)

TUNISIA, IN COMMENCING THE DISCUSSION, STATED ITS PREFERENCE FOR REV. 2 IN THAT ONLY STATES COULD BRING THE ISSUE OF DETENTION BEFORE THE TRIBUNAL, AND WELCOMED THE DELETION OF THE PHRASE OR BY THE OWNER, OPERATOR, OR MASTER OF A VESSEL." ECUADOR, IN RESPONSE TO THE NEW PROPOSAL, STATED ITS CONCERN AS TO CONSTITUTIONAL DIFFICULTIES ABOUT AUTHORIZING A CONSULAR OFFICER TO REPRESENT A STATE IN INTERNATIONAL PROCEEDINGS. THE CHAIRMAN, THEN PROPOSED THAT THE PHRASE "OR ON ITS BEHALF BY EITHER A DIPLOMATIC OR CONSULAR OFFICER" BE DELETED AND THAT IT BE REPLACED BY "OR ON ITS BEHALF BY ANY PERSON DULY AUTHORIZED BY IT", THEREBY LEAVING OPEN THE POSSIBILITY THAT THE FLAG STATE MAY AUTHORIZE THE OWNER, OPERATOR, OR MASTER OF THE VESSEL TO ACT FOR IT. IN REPLY TO ECUADOR'S WORRY ABOUT DEPRIVING LIMITED OFFICIAL USE

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DOMESTIC COURTS OF JURISDICTION OVER VESSELS, THE CHAIRMAN STATED THAT THE TEXT DID NOT PREJUDICE THE CASE IN THE DOMESTIC FORUM AS 14(3) PROVIDED THAT INTERNATIONAL PROCEEDINGS SHALL BE "LIMITED TO THE QUESTION OF RELEASE ONLY, WITHOUT PREJUDICE TO THE MERITS OF ANY CASE AGAINST THE VESSEL, ITS OWNER OR ITS CREW BEFORE THE APPROPRIATE DOMESTIC FORUM."

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OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06  
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FROM LOSDEL

KOREA WISHED TO EXPAND THE ARTICLE, TO PROVIDE THAT IN CASES WHERE THE "OWNER STATE" WAS NOT SYNONYMOUS WITH THE "FLAG STATE" THAT THE FORMER BE ALLOWED TO BRING THE APPLICATION. THE CHAIRMAN REJECTED THIS VIEW AS THE OWNER HAS HIMSELF CHOSEN THE FLAG STATE. THE USSR HAD NO PROBLEM WITH THE SUBPARAGRAPH AS DRAFTED. SWITZERLAND BELIEVED "MAY" SHOULD BE CHANGED TO "MUST" AND SAW NO NEED TO RETAIN THE LAST HALF OF THE PARAGRAPH, AS DIPLOMATIC AND CONSULAR OFFICERS WERE SYNONYMOUS WITH THE FLAG STATE. ALGERIA, SPEAKING FOR THE FIRST TIME IN THE PLENARY, WISHED TO SEE THE SECOND HALF OF 14(2) DELETED, AS THE PROCEDURE SHOULD BE OPEN ONLY TO STATES, AND MENTIONED THAT IN GENERAL REV. 2 WAS AN ACCEPTABLE BASIS FOR NEGOTIATIONS. BULGARIA AND AUSTRALIA SUPPORTED THE CHAIRMAN'S PROPOSAL, STATING CLEARLY THAT THE OWNER, OPERATOR OF MASTER SHOULD BE ALLOWED TO BRING THE APPLICATION IF SO AUTHORIZED BY THE FLAG STATE.

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5. ARTICLE 14(3) (QUALIFICATION OF RELEASE)

THE USSR, SUPPORTED BY BULGARIA, PROPOSED THAT IN 14(1) AND 14(3) THE WORD "PROMPT" BE CHANGED TO "IMMEDIATE".

6. ARTICLE 14(4) (DECISION TO RELEASE)

MANY DELEGATES PROPOSED THE DELETION OF THE FINAL CLAUSE "UPON THE POSTING OF THE BOND OR THE SECURITY ORDERED BY THE COURT OR TRIBUNAL." BRAZIL SUPPORTED DELETION OF THE CLAUSE, REASONING THAT NO DOMESTIC COURT OR TRIBUNAL WOULD ALLOW RELEASE OF A VESSEL ABSENT POSTING OF THE REQUISITE BOND OR SECURITY. FRANCE EXPRESSED CONCERN AS TO CONFLICTS BETWEEN NATIONAL AND INTERNATIONAL JURISDICTIONS, AND THE NEED TO EXHAUSE LOCAL REMEDIES BEFORE PROCEEDING TO THE LATTER. SHE ALSO AVERRED NATIONAL PROCESSES MAY OFTEN BE MORE EXPEDITIOUS THAN INTERNATIONAL ONES. SIMILARLY, AUSTRALIA BROUGHT UP THE ISSUE AS TO THE APPROPRIATE PROCEDURE IN THE EVENT THE AMOUNT OF THE BOND SET BY THE NATIONAL FORUM WAS CONTESTED; UNDER ARTICLE 14 AS DRAFTED THE INTERNATIONAL FORUM WOULD BE SEIZED OF SUCH A DISPUTE, A CIRCUMSTANCE WHICH COULD LEAD TO A CONFLICTS PROBLEM.

7. THE UNITED STATES REPRESENTATIVE, IN RESPONSE TO THE MANY ISSUES RAISED, MADE THE FOLLOWING POINTS:

(A) IN RESPONSE TO THE STATEMENT BY SWITZERLAND AS TO THE AMENDMENT TO 14(1) PROPOSED BY THE CHAIRMAN, THE FIRST REFERENCE TO "ANY COURT OR TRIBUNAL" REFERRED TO ONE CHOSEN BY THE PARTIES IN ACCORDANCE WITH SECTION I OF PART IV; THE SECOND REFERENCE WAS TO ANY COURT OR TRIBUNAL PROVIDED FOR IN ARTICLE 9;

(B) THAT THE UNITED STATES COULD AGREE WITH BRAZIL IN AMENDING 14(1) FROM "HAVE FAILED TO APPLY" TO "ALLEGED TO HAVE FAILED TO COMPLY;"

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(C) THAT PROBLEMS IN 14(1) AS TO THE SCOPE OF QUESTION OF RELEASE MAY BEST BE SOLVED BY SPECIFIC CROSS REFERENCE TO THE APPROPRIATE ARTICLES IN PARTS II AND III;

(D) THAT THE UNITED STATES COULD ACCEPT THE NIGERIAN PROPOSAL TO REPLACE "FAILED TO COMPLY" BY "FAILED, NEGLECTED OR REFUSED TO COMPLY" IN 14(4);

(E) THAT THE CONSTITUTIONAL CONCERN OF ECUADOR AS TO WHAT ENTITIES MAY BE AUTHORIZED BY A STATE TO BRING APPLICATION FOR RELEASE WAS ADEQUATELY PROVIDED FOR BY THE PRESIDENT'S PROPOSED AMENDMENT TO 14(2);

(F) THAT WHILE CLEAR IN 14(4) THAT THE DOMESTIC TRIBUNAL WOULD POST THE REQUIRED BOND, THE AMOUNT OF THE BOND COULD BE MANDATED BY THE INTERNATIONAL TRIBUNAL;

(G) THAT THE SOVIET CONCERN FOR COMPENSATORY EXPENSES IN CASES OF UNJUSTIFIABLE DETENTION, A CONCERN WITH WHICH WE AGREE, WOULD MORE APPROPRIATELY BE ADDRESSED IN ANOTHER PART OF THE CONVENTION.

8. CHINA, IN OFFERING A GENERAL COMMENT ON PART IV, REV. 2, UNDERLINED THAT ANY ACCEPTANCE OF COMPULSORY DISPUTE SETTLEMENT PROCEDURE SHOULD BE ON A VOLUNTARY BASIS BUT IT STATED AT THE SAME TIME THAT ARTICLE 9 SEEMED TO BE AN ACCEPTABLE BASIS FOR NEGOTIATIONS. FRANCE AGAIN REITERATED HER SUPPORT FOR ARBITRATION AND HER AVERSION TO THE LAW OF THE SEA TRIBUNAL; AND REFERRED TO SEVERAL DRAFTING INCONSISTENCIES IN THE FRENCH VERSION OF THE PART IV TEXT. THE FRG UNINTENTIONALLY MADE AN UNHELPFUL INTERVENTION, POINTING OUT THE DICHOTOMY BETWEEN ARTICLES 14 AND 17, AND THAT REVISIONS SHOULD BE MADE TO ARTICLE 17 TO INDICATE CLEARLY THAT IT DID NOT APPLY TO ARTICLE 14. IT STATED THAT THIS CAN ALSO BE ACCOMPLISHED IN 14(3) BY ADDING "INTERNATIONAL

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OF " BEFORE "DOMESTIC".

9. THE CHAIRMAN ADJOURNED THE MEETING AND STATED THAT  
THE DISCUSSION OF ARTICLE 14 WOULD BE CONTINUED IN A  
FURTHER INFORMAL PLENARY ON THURSDAY, 16JUNE AT 3:00P.M.  
LEONARD

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## Message Attributes

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